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**U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:11-cv-01015-DGC
Internal Use Only**

Hallmark Hardwoods Incorporated v. Kendzlic et al
Assigned to: Judge David G Campbell
Cause: 15:1125 Trademark Infringement (Lanham Act)

Date Filed: 05/20/2011
Jury Demand: Plaintiff
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

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20 UNITED STATES DISTRICT COURT

21 DISTRICT OF ARIZONA

22 Hallmark Hardwoods, Inc.,

23 Plaintiff,

24 v.

25 Timothy Kendzlic and Southwest
26 Hardwood Distributors, LLC,

27 Defendants.

Case No.:

COMPLAINT for:

1. Trademark Infringement
2. False Designation of Origin; and
3. Unfair Competition and False Advertising.

Jury Trial Demanded

1 1. This is an action arising under the Lanham Act, 15 U.S.C. § 1051, *et*
2 *seq.*, as amended, for trademark infringement and false designation of origin, and for
3 related claims of unfair competition and false advertising.

4 **Jurisdiction and Venue**

5 2. This Court has subject matter jurisdiction over Hallmark Hardwoods'
6 claims by virtue of 15 U.S.C. § 1121(a) and 28 U.S.C. § 1338, in that all of these
7 claims arise under federal law, specifically the Lanham Act, 15 U.S.C. §§ 1114 and
8 1125.

9 3. This Court has personal jurisdiction over Defendant Timothy Kendzlic
10 because he is a citizen of and domiciled in Arizona. This Court has personal
11 jurisdiction over Defendant Southwest Hardwood Distributors, LLC, an Arizona
12 limited liability company, because it is incorporated or registered to conduct business
13 in Arizona.

14 4. Venue in this district is proper under 28 U.S.C. § 1391 and 28 U.S.C.
15 § 1400(a), in that (1) the defendants reside and may be found in this judicial district;
16 (2) a substantial part of the events giving rise to this action occurred in this district;
17 and (3) a substantial part of the property that is the subject of this action is believed to
18 be located in this district.

19 **Parties**

20 5. Plaintiff Hallmark Hardwoods, Inc. ("Hallmark Hardwoods") is a
21 California corporation with its principal place of business in Ontario, California.

22 6. Defendant Timothy Kendzlic ("Kendzlic"), is an individual residing in
23 the County of Maricopa, Arizona.

24 7. Defendant Southwest Hardwood Distributors, LLC ("Southwest") is
25 an Arizona limited liability company owned, controlled, and managed by Kendzlic,
26 with its principal place of business in Phoenix, Arizona.

1 8. Hallmark Hardwoods is informed and believes, and thereupon alleges,
2 that Kendzlic is the alter ego of Southwest, and that justice and equity can best be
3 accomplished and fraud and unfairness defeated by disregarding the distinct entity of
4 the corporate form of Southwest.

5 9. Hallmark Hardwoods is informed and believes, and on that basis
6 alleges, that in doing the acts alleged herein, the defendants were acting as the agents,
7 servants, representatives, and/or employees of each other, and that the defendants
8 were acting within the scope of their authority as such agents, servants, and/or
9 employees with the permission, knowledge, consent, and ratification of their
10 principals.

11 **Factual Allegations**

12 A. Hallmark Hardwoods® Products

13 10. Hallmark Hardwoods manufactures and sells the Hallmark Hardwoods®
14 line of hardwood flooring. Hallmark Hardwoods® products are well known to
15 distributors and customers throughout the world for their beauty and quality.
16 Hallmark Hardwoods® products come with extensive warranty coverage, including a
17 lifetime warranty on product structure and a 25-year limited residential finish
18 warranty.

19 11. Hallmark Hardwoods is also the owner of the distinctive Hallmark
20 Hardwoods® logo that is used to identify Hallmark Hardwoods® products. Hallmark
21 Hardwoods has used this logo to identify Hallmark Hardwoods® products since 2006
22 and has spent approximately \$2 million during that span on promoting, marketing,
23 and advertising its brand under its Hallmark Hardwoods® trademarks. The Hallmark
24 Hardwoods® logo has obtained secondary meaning as a mark identifying product
25 manufactured and sold by plaintiff through its Hallmark Hardwoods® line.

26 12. Hallmark Hardwoods is the owner of the federally registered trademark
27 for the stylized Hallmark Hardwoods® word mark, registered in the United States
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1 Trademark Office on the Principal Register, as Registration No. 3,289,376, and issued
2 on September 11, 2007. Copies of the certificate of registration and record of
3 assignment for this mark are attached hereto as Exhibit A and are hereby incorporated
4 by reference.

5 13. Hallmark Hardwoods is also the owner of the federally registered
6 trademark for the "Hallmark Hardwoods H" word mark, featuring the "Hallmark
7 Hardwoods" stylized logo with a stylized "H" between the "Hallmark" and
8 "Hardwoods" words, with the "H" enclosed in three concentric circles. This mark is
9 registered in the United States Trademark Office on the Principal Register, as
10 Registration No. 3,289,349, and was issued on September 11, 2007. Copies of the
11 certificate of registration and record of assignment for this mark are attached hereto as
12 Exhibit B and are hereby incorporated by reference.

13 14. Hallmark Hardwoods is also the owner of the federally registered
14 trademark for the "H" mark, featuring a stylized "H" enclosed in three concentric
15 circles with scalloped, ruffled and zig-zag edges, where the circles are totally or
16 partially shaded. This "H" logo is registered in the United States Trademark Office
17 on the Principal Register, as Registration No. 3,200,275, and was issued on January
18 23, 2007. Copies of the certificate of registration and record of assignment for this
19 mark are attached hereto as Exhibit C and are hereby incorporated by reference.

20 15. Hallmark Hardwoods has exclusively used the Hallmark Hardwoods®
21 trademarks described above to identify the source of its products since February 2006.
22 As the exclusive owner of the trademarks described above, plaintiff has the right to
23 enforce its exclusive rights in these marks, and to sue others for infringing these
24 marks.

25 16. Hallmark Hardwoods has expended substantial money and effort
26 advertising and promoting its Hallmark Hardwoods® brand name through the stylized
27 Hallmark Hardwoods® word mark, the "Hallmark Hardwoods H" word mark, and the
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1 “H” mark. As a result of these promotional and advertising efforts, the public has
2 come to associate the stylized Hallmark Hardwoods® word mark, the “Hallmark
3 Hardwoods H” word mark, and the “H” mark with the high quality hardwood flooring
4 sold by plaintiff through its Hallmark Hardwoods product line. The stylized Hallmark
5 Hardwoods® word mark, the “Hallmark Hardwoods H” word mark, and the “H” mark
6 have become distinctive and famous marks as a result of plaintiff’s advertising and
7 promotional efforts and the reputation for quality that plaintiff’s products bearing
8 those marks have earned among consumers. Attached hereto as Exhibit F are
9 photographs of genuine Hallmark Hardwoods® product packaging depicting these
10 marks.

11
12 B. Defendants’ Unlawful Conduct

13 17. Kendzlic and Southwest are involved in the display, distribution, and
14 sale of product that is falsely marked as Hallmark Hardwoods® product.

15 18. The product displayed, distributed, and sold by Kendzlic and Southwest
16 is not genuine Hallmark Hardwoods® product. The product displayed, distributed,
17 and sold by Kendzlic and Southwest is not made by Hallmark Hardwoods, and is a
18 counterfeit copy (the “counterfeit Hallmark Hardwoods product”).

19 19. The counterfeit Hallmark Hardwoods product displayed, distributed,
20 and sold by Kendzlic and Southwest is superficially identical to genuine Hallmark
21 Hardwoods® product. Attached hereto as Exhibit D are copies of photographs
22 depicting the counterfeit and genuine product side-by-side, in which the counterfeit
23 product is marked as “A” and genuine Hallmark Hardwoods® product is marked as
24 “B.”

25 20. Upon closer examination, there are significant differences between the
26 counterfeit Hallmark Hardwoods product displayed, distributed, and sold by Kendzlic
27 and Southwest, on the one hand, and genuine Hallmark Hardwoods® product, on the
28

1 other. For example, the color of the counterfeit product is darker than is the color of
2 genuine Hallmark Hardwoods® product samples. The backing of the counterfeit
3 product reveals other differences: (1) the counterfeit backing is made of birch and
4 poplar wood where the genuine backing is exclusively birch; (2) the counterfeit
5 backing contains inconsistent scribe cuts at the ends and approximately 4 inches apart
6 along the boards where the genuine backing has consistent scribe cuts that are 2
7 inches apart; (3) the scribe cuts on the counterfeit backing are 0.095 inches wide
8 where the scribe cuts on the genuine backing are 0.065 inches wide; and (4) the
9 counterfeit product has a poplar core where the genuine product has a
10 birch/eucalyptus blend core.

11 21. The counterfeit Hallmark Hardwoods product displayed, distributed,
12 and sold by Kendzlic and Southwest is sold in packaging different from that of
13 genuine Hallmark Hardwoods® product. Attached hereto as Exhibit E are copies of
14 photographs depicting the packaging used for the defendants' counterfeit product.
15 Attached hereto as Exhibit F are copies of photographs depicting the packaging used
16 for genuine Hallmark Hardwoods® product.

17 22. Hallmark Hardwoods is informed and believes, and on that basis
18 alleges, that Kendzlic and Southwest have distributed and sold counterfeit Hallmark
19 Hardwoods products in this and other states, thereby constituting a part of and
20 affecting interstate commerce.

21 23. Hallmark Hardwoods is informed and believes, and on that basis
22 alleges, that Kendzlic and Southwest know or are willfully blind to the fact that the
23 counterfeit Hallmark Hardwoods product that they display, distribute, and sell is
24 counterfeit, and that Kendzlic and Southwest have intentionally and deceptively
25 marketed and sold the counterfeit Hallmark Hardwoods product as genuine Hallmark
26 Hardwoods® product.

1 24. Long after Hallmark Hardwoods' adoption and use of its marks on its
2 Hallmark Hardwoods® product, and after Hallmark Hardwoods obtained the
3 trademark registrations alleged above, Kendzlic and Southwest adopted and used
4 substantially identical likeness of the subject marks on counterfeit Hallmark
5 Hardwoods product, without Hallmark Hardwoods' consent, by displaying,
6 distributing, and selling counterfeit Hallmark Hardwoods.

7 25. By engaging in this conduct, Kendzlic and Southwest have acted in
8 willful disregard of laws protecting Hallmark Hardwoods' goodwill, and they have
9 intentionally confused and deceived, or threaten to confuse and deceive, the
10 consuming public concerning the source and sponsorship of the counterfeit Hallmark
11 Hardwoods product. By their wrongful conduct, Kendzlic and Southwest have traded
12 upon and diminished Hallmark Hardwoods' goodwill and have caused Hallmark
13 Hardwoods to lose sales to consumers who have been deceived into purchasing
14 counterfeit Hallmark Hardwoods product instead of genuine Hallmark Hardwoods®
15 product.

16
17 **Trademark Infringement**
18 **(First Claim)**

19 26. Hallmark Hardwoods realleges and incorporates all of the preceding
20 paragraphs.

21 27. Hallmark Hardwoods holds valid registered trademarks for the stylized
22 Hallmark Hardwoods® word mark, the "Hallmark Hardwoods H" word mark, and the
23 "H" mark.

24 28. In connection with the manufacturing, advertising, and offering for sale
25 of the counterfeit Hallmark Hardwoods, the defendants have used in commerce a
26 reproduction, counterfeit, copy, or colorable imitation of plaintiff's registered stylized
27 Hallmark Hardwoods® word mark, the "Hallmark Hardwoods H" word mark, and the
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1 “H” mark without the consent of plaintiff in violation of 15 U.S.C. § 1114(1)(a) and
2 have applied such counterfeited marks to labels, signs, prints, packages, wrappers,
3 receptacles, and advertisements intended to be used in commerce, without Hallmark
4 Hardwoods’ consent, in violation of Section 32 of the Lanham Act, 15 U.S.C. §
5 1114(1)(b).

6 29. The use of the stylized Hallmark Hardwoods® word mark, the
7 “Hallmark Hardwoods H” word mark, and the “H” mark is likely to cause confusion,
8 to cause mistake, or to deceive.

9 30. The defendants’ violation of 15 U.S.C. § 1114 entitles Hallmark
10 Hardwoods to injunctive relief pursuant to 15 U.S.C. § 1116(a) and the seizure of
11 goods bearing the counterfeit marks pursuant to 15 U.S.C. § 1116(d).

12 31. Hallmark Hardwoods is informed and believes, and on that basis
13 alleges, that as a result of the defendants’ unauthorized use of Hallmark Hardwoods’
14 registered trademarks, the defendants have profited and will profit in the future from
15 the sale of counterfeit Hallmark Hardwoods, thereby entitling Hallmark Hardwoods to
16 an award of the defendants’ profits, damages to Hallmark Hardwoods in an amount to
17 be proved at trial, and the cost of this action, pursuant to 15 U.S.C. § 1117(a).

18 32. Hallmark Hardwoods is informed and believes, and on that basis
19 alleges, that the defendants’ infringement of Hallmark Hardwoods’ registered
20 trademarks constitutes the intentional use of a mark or designation, knowing such
21 mark or designation is a counterfeit mark, or with willful blindness to the counterfeit
22 nature of the mark or designation, in connection with the sale, offering for sale, and
23 distribution of goods, thereby entitling Hallmark Hardwoods to treble damages,
24 prejudgment interest, and attorneys’ fees pursuant to 15 U.S.C. §§ 1117(a) and
25 1117(b), and entitling Hallmark Hardwoods to statutory damages pursuant to 15
26 U.S.C. §§1117(c)(1) and 1117(c)(2).

False Designation of Origin

(Second Claim)

33. Hallmark Hardwoods realleges and incorporates all of the preceding paragraphs.

34. By manufacturing, advertising, and offering for sale the counterfeit Hallmark Hardwoods, bearing the stylized Hallmark Hardwoods® word mark, the “Hallmark Hardwoods H” word mark, and the “H” mark, and by representing that the counterfeit Hallmark Hardwoods is a genuine product, the defendants have engaged in false designation of origin and have made false descriptions and representations in connection with goods sold in interstate commerce.

35. The defendants’ false designation of origin and false descriptions and representations regarding the counterfeit Hallmark Hardwoods have caused and are likely to cause confusion, mistake, or deception as to (1) the affiliation, connection, or association of plaintiff with the counterfeit Hallmark Hardwoods and (2) the origin, sponsorship, or approval by Hallmark Hardwoods of the counterfeit Hallmark Hardwoods.

36. The defendants are in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

37. As a proximate result of the defendants’ acts, Hallmark Hardwoods has suffered, and will continue to suffer, substantial damage to its reputation and goodwill, as well as diversion of trade and loss of revenues and other damages in an amount yet to be ascertained.

38. Hallmark Hardwoods is informed and believes, and on that basis alleges, that as a result of the defendants’ false designation of the origin of the counterfeit Hallmark Hardwoods, the defendants have profited and will profit in the future from the sale of counterfeit Hallmark Hardwoods, thereby entitling Hallmark Hardwoods to an award of defendants’ profits, damages to Hallmark Hardwoods in an

1 amount to be proved at trial, and the cost of this action, pursuant to 15 U.S.C. §
2 1117(a).

3 39. The defendants' violation of 15 U.S.C. § 1125(a) entitles Hallmark
4 Hardwoods to injunctive relief pursuant to 15 U.S.C. § 1116(a).

5
6 **Unfair Competition and False Advertising – 15 U.S.C. § 1125**

7 **(Third Claim)**

8 40. Hallmark Hardwoods realleges and incorporates all of the preceding
9 paragraphs.

10 41. The defendants have used false or misleading descriptions of fact or
11 representations of fact in commercial advertising or promotion, and in connection
12 with goods or services in commercial advertising or promotion. The false
13 descriptions or representations have misrepresented the nature, qualities, or
14 geographic origin of the defendants' goods, services, or commercial activities, or the
15 goods, services, or commercial activities of another person, in violation of Section
16 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

17 42. The defendants' acts and conduct, as alleged herein, are business
18 practices likely to deceive or confuse the purchasing public and trade upon Hallmark
19 Hardwoods' reputation, both as to the source, origin, sponsorship, and approval of the
20 goods provided, and as to the affiliation, connection, or association of the defendants
21 with Hallmark Hardwoods. These acts constitute acts of unfair competition, false
22 designation of origin, and false representation of affiliation, all in violation of 15
23 U.S.C. § 1125(a). Hallmark Hardwoods is informed and believes, and upon that basis
24 alleges, that each of the defendants' respective acts of reputation appropriation and
25 unfair competition was willful.

26 43. The defendants' acts constitute unfair competition and false advertising
27 in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

46. By reason of the foregoing, Hallmark Hardwoods has incurred and will continue to incur attorneys' fees and other costs in connection with the prosecution of its claims herein, which attorneys' fees and costs Hallmark Hardwoods is entitled to recover from the defendants, and each of them, pursuant to 15 U.S.C. § 1117.

47. Hallmark Hardwoods demands trial by jury on all issues triable to a jury.

Hallmark hardwoods prays for judgment against the defendants, and each of them, as follows:

2. For an order of seizure, pursuant to 15 U.S.C. §§ 1116(a) and 1116(d), ordering defendants to surrender all product, packaging, boxes, tags, labels, advertisements, marketing materials, stationary, and other materials bearing the stylized Hallmark Hardwoods® word mark, the “Hallmark Hardwoods H” word mark, or the “H” mark, or any other mark confusingly similar to Hallmark Hardwoods’ marks; and directing the seizure of the defendants’ infringing product, infringing

1 packaging, means of manufacturing the counterfeit product and marks, and any
2 records documenting the manufacture, sale, or receipt of things involved in such
3 violation, including but not limited to electronic media reflecting the import,
4 acquisition, purchase, distribution, storage, or other disposition of any counterfeit
5 Hallmark Hardwoods product;

6 3. For destruction of the infringing articles;

7 4. For an accounting of all profits earned by the defendants on the sale of
8 counterfeit Hallmark Hardwoods product;

9 5. For a constructive trust on all said profits derived from the defendants'
10 infringing activities;

11 6. For compensatory damages according to proof totaling three times the
12 amount found as profits or damages, whichever is greater, by reason of defendants'
13 violation of Section 32(1)(a) of the Lanham Act, 15 U.S.C. § 1114(1)(a), and 15
14 U.S.C. § 1117;

15 7. For treble damages;

16 8. For statutory damages;

17 9. For prejudgment interest;

18 10. For reasonable attorneys' fees;

19 11. For taxable costs and disbursements; and

20 12. For any further relief that the Court deems just and proper.
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1 DATED this 20th day of May, 2011.

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